Supreme Court, U. S.
FILED
MAR 24 1977
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

NO. 76-1321

John L. York, Appellant

V.

Ethel York Davis, Appellee

On Appeal From The Supreme Court of Georgia

NO. 30808

JURISDICTIONAL STATEMENT

John L. York, Attorney
1926-B Johnson Ferry Road, NE
Atlanta, Georgia 30319

On appeal to the Supreme Court of the United States
From the Supreme Court of Georgia

John L. York, Appellant	)	
V.		No. 30808
Ethel York Davis, Appellee	)	

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IN THE

Supreme Court of the United States

_____ TERM

No. _____

John L. York, Appellant

vs.

Ethel York Davis, Appellee

On Appeal From The Supreme Court of Georgia

No. 30808

JURISDICTIONAL STATEMENT

Opinion Below And Denial Of Rehearing

The opinion of the Supreme Court of Georgia in this case is dated July 9, 1976, and was entered on that day. It has not been printed. A copy of the opinion is attached hereto as "Exhibit A." A motion for rehearing and reversal of the opinion was duly filed. It was denied without explanation by order of the Georgia Supreme Court dated and entered as stated thereon on July 31, 1976, this day being Saturday, while notification of the denial is post-marked after the filing of the motion at 4:00 P.M. on the previous day. Obviously, the Georgia Supreme Court did not consider the motion. A copy of said notice is attached as "Exhibit B."

Summary of grounds for invoking the jurisdiction of the United States Supreme Court.

Under the controlling decision of the Georgia Supreme Court, MILLER V. HARRIS COUNTY, ET AL, 186 Ga. 648, 198 S. E. 673, and the provision in Georgia Code, Annotated in Sections 113-801 and

113-802, the appointment of Appellee as "successor executrix" of the estate of Jesse Hardman York, deceased in 1965, or as any kind of executor, could be made only upon proof that he owed debts or that his will's terms required further action by an executor. Appellee testified that he owed no debts, and the will has no such terms. Under the Georgia Supreme Courts interpretation of Gerogia Code Sections 113-1210.1 and 113-1210.2, hereafter quoted at length, the lower courts could appoint Appellee without evidence or meeting any requirements, guides or purposes, and thus legislate the rights of the parties contrary to Art. III Sec. 1, Par 1, (Ga. Code Sec. 2-1301) of the Georgia Constitution vesting legislative power only in the General Assembly. This deprives Appellant of his property without due process of law as forbidden by the 14th Amendment to the Constitution of the United States.

28 U S C A 1257 provides for direct appeals from the judgment of the highest court of a state (Ga. Supreme Court) to the United States Supreme Court (2) by appeal where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

Exclusive power to legislate is also vested by the same kind of provisions in the Congress of the United States. As early as the days of President Franklin D. Roosevelt, the United States Supreme Court held in the case of **Schecter V. United States,** 295 U. S. 495, 79 L. ed. 1570, 55 S. Ct. 837, that the National Recovery Act attempted to grant legislative power to a federal agency to decide private rights and was therefore void. A number of similar cases for any period can be found in the

American Digest under the topic Constitutional Law, Key No. 61.

Trial and appellate processes followed in this case.

Although Dr. York died on December 23, 1965, and his will was probated on December 26, 1965, Appellee did not bring suit against Appellant for her appointment as "successor executrix" of his "estate" until Feb. 25, 1974 by service of summons. She alleged merely that the administration or his estate had not been completed without giving any particulars. Appellant and defendant below cited the wills provisions giving his Aunt, Etta H. Mitchell, a life estate in all of his assets with the right to dispose of individual assets during her life-time, and the remainder to Mabel York Grady, John L. York and Ethel York Davis. He further alleged that Mrs. Mitchells keeping the estate open until her death on November 30, 1972 for the purpose of exercising her life estate and her death on that date conclusively showed her assent to her own life estate, terminated her life estate and Dr. Yorks estate by death, under Ga.Code Section 113-802, and vested title to and the right of possession immediately in the remaindermen. Hence, Dr. Yorks estate did not exist and had no assets in it. See also the Ga. Supreme Courts decision in the case of MILLER V. HARRIS COUNTY, ET AL, 186 Ga. 648, 198 S. E. 673.

The proceeding began in the Ordinarys Court (now probate court). The only pretended evidence there presented was the letter of John E. Davis of the Citizens & Southern National Bank to T. Michael Hurley, Attorney, dated March 27, 1974 stating that the Bank, UPON THE ADVICE OF UNIDENTIFIED COUNSEL required that letters testamentary be issued to Appellee before it would

permit her to draw checks upon an account formerly held in the name of Dr. York in the Bank. Although inadmissible for any purpose this letter was revoked by the Bank on April 18, 1974 through the letter of Brooks D. Campbell, Banking Officer, to Mrs. Davis in which he stated:

> "Until this matter is settled we will be unable to honor any checks signed by you for the estate of Dr. York. We are transferring the funds back to the original account (213-23-605) and will maintain this status until such time as the matter is cleared up."

This proceeding was initiated in the Ordinarys Court. It was not brought under Ga. Code Sections 113-1210.1 and 113-1210.2 concerning the appointment of administrators de bonis non as alleged by the Ga. Supreme Court, but was not brought under any statute or Code Section. It merely asked that she be appointed executor of Dr. Yorks estate which in fact had terminated and did not exist.

Without any evidence or any supporting law, the Ordinary entered an order appointing Appellee as "successor executrix" of the non-existent estate of Jesse Hardman York. From this order Appellant appealed to the Superior Court of Fulton County, Georgia under the provisions of Ga. Code Section 6-201 providing for such appeals. Appellant gave notice of appeal and paid the costs in the Ordinarys Court. Sec. 6-105 provides that such action results in a supersedeas staying any further action in that Court pending final judgment.

Georgia Code Section 6-501 provides that upon the hearing of the appeal in the Superior Court further material evidence may be produced by either party, but the Code Section does not

authorize the Superior Court to go further than affirming or denying the Ordinarys order.

In the hearings before these courts, the only pretended evidence beyond the repudiated letter of John E. Davis offered by Appellee, was the worthless assertion that the paper title to the vacant lot of Vermont Road in Atlanta, Georgia, and the paper right to the account in the Citizens & Southern National Bank were in the name of Dr. York at the time of his death.

This theory has no support in the law of Georgia. Georgia Code Section 113-1232 provides for dispensing with administration where the deceased dies intestate and owes no debts. Gerogia Code Section 113-1314 provides for dispensing with administration where the heirs prefer to settle the estate without administration. Tax liens are eliminated from the procedures for this purpose by Code Seciton 113-1237. Of course, the heirs are named in a will. Where there is no will, THE HEIRS ARE NAMED IN THE RULES OF INHERITENCE set forth in Ga. code Sections 113-902 and 113-903. In each of these cases the heir, legatee or devisee do not have paper title or own the particular asset until they make formal conveyances to each other dividing the assets. In the present case, if Appellees theory was followed, the individual heir would not know what asset(s) he or she owns until they made such division.

The contention that Mrs. Mitchell did not take possession of these properties is pure fantasy. At Dr. Yorks death, he owned a house and this adjoining vacant lot. Mrs. Mitchell sold the house but kept the vacant lot. Appellant was never able to get any information form Appellee as to what she expected Mrs. Mitchell to do, much less discover why she thought it was necessary. During

the executorship, Mrs. Mitchell drew countless checks on funds formerly belonging to Dr. York. Her death merely vested all property rights in the remaindermen named by Dr. York in his will.

The disregard of the applicable statutes and he controlling decision of the Georgia Supreme Court.

The two lower courts assiduously disregarded the applicable statutes and the controlling decision of the Georgia Supreme Court in the case of HARRIS V. MILLER COUNTY, ET AL., 186 Ga. 648; 198 S.E. 673.

The statues provided:

Georgia Code Section 113-801:

"113-801. All property, both real and personal, being assets to pay debts, no devise or legacy passes the title until the assent of the executor is given to such devise or legacy."

Georgia Code Section 113-802:

"113-802. The assent of the executor may be express or may be presumed from his conduct.—In the absence of prior assent, the discharge of the executor shall be conclusive evidence of his assent."

In addition to the testimony of the Appellee that Dr. Yorks estate owed no debts, the lapse of time between the probate of Dr. Yorks will on Dec. 26, 1965 and the service of her suite of Feb. 25, 1974 would have turned up any debts owed by his estate.

The lapse of time in which Mrs. Mitchell held the estate to exercise her rights to the life estate and dispose of individual assets must create the presumption that she assented to her own life estate. Her death on Nov. 30, 1972 must have

discharged her as executrix, created the conclusive evidence of her assent.

These are the only items of evidence that could be material to her proceeding. In their absence; there was no evidence to support her petition.

The controlling decision of the Georgia Supreme Court is its decision in the Case of MILLER V. HARRIS COUNTY, ET AL, 186 Ga. 648; 198 S. E. 673. In that decision the Court stated:

"1. The assent of the exeuctor to a legacy to one for life inures to the benefit of the remaindermen; and unless otherwise provided in the will the remaindermen my take possession immediately on the termination of the life estate. The executor can recover only where it is necessary to have it for the purpose of executing the will, as where it provides for a sale or other act to be done in order to effect division among the remaindermen."

"2. Where, under the executors assent to a devise for life with remainder over, the remaindermen, after the death of the life tenant, become entitled to immediate possession of the land, such land is no longer any part of the estate of the testator."

Appellees violation of the pending supersedeas and her unlawful taking of the bank account in the Citizens & Southern National Bank.

As heretofore stated, Appellant filed a notice of appeal from the Ordinarys order of April 10, 1974 and the payment of his costs acted as a supersedeas staying any further action in his Court, as provided by Ga. Code Section 6-105. See Exhibits H and L to motion for rehearing before Georgia Supreme Court. The transmittal letter for

the notice of appeal and the check for costs reminded the Ordinary that they acted as a supersedeas. Never-the-less, before the hearing in the superior Court on Oct. 16, 1975, and at a hearing erroneously placed on the Motion Calendar on Sept. 13, 1974 it appeared they had secretly, without notice, and in violation of the supersedeas, proceeded in the Court of Ordinary, and obtained unlawfully all funds in the bank.

Appellant does not practice criminal law. However, he is informed by informed lawyers who regularly engage in such practice that such an unlawful taking is a theft within the provisions of Section 26-1802 of the Code of Georgia Annotated. Subsection (a) of the Code Section provides;

> "26-1802 Theft by taking.
>
> (a) Any person commits theft by taking when he unlawfully takes or, being in lawful possession thereof, unlawfully appropriates any property of another with the intention of depriving him of said property, regardless of the manner in which said property is taken or appropriated.

With these statements, appellant leaves the interpretation of this code section, and its application, for the Courts consideration.

> The statutes that are unconstitutional under their interpretation by the Georgia Supreme Court.

Not having any evidence to support the appointment of Appellee as executor or administrator of the "estate of Jesse Hardman York," Appellee resorted to statutes which she claimed no supporting evidence was required by them. It appears that these statutes were first injected into the case on Page 4 of the transcript of

The hearing on October 16, 1975. These statutes are as follows:

> "Ga. Acts 1952, p. 87. Ga. Acts 1969 p. 1139 Codified as Sec. 113-1210.1 of Ga. Code, Annotated.
>
> In all cases when the only qualified and acting executor of the estate of a decedent dies, resigns or otherwise become disqualified to serve, any person or persons having an interest in the estate of such first decedent shall have the right to apply to the probate court having jurisdiction of the admistration of such first estate for the appointment of an administrator de bonis non with the will annexed of such first testator."
>
> "Ga. Acts 1952, pp. 87,88; Ga. Acts 1969, pp. 1139, 1150." (Codified as Sec. 113-1210.2, Annotated.)
>
> Upon the hearing of the application, after the issuance and publication of citation as in other cases of applications for letters of administration, the judge of the probate court shall inquire into the circumstances of the case and determine whether the interest of such first estate and the persons interested therein will be best served by the appointment of an adminstrator de bonis non with will annexed by or by permitting the executor, if any, appointed under the will of such deceased executor to be or become, as the case may be, the executor of the first estate by operation of law."

In the case of JEPSON V. MARTIN, 116 Ga. 772(2), 43 S. E. 75, the Georgia Supreme Court set forth its view that under the common law an executor of an executor is ipso facto executor of

the first estate. These Acts were intended to afford more flexibility of procedure in such cases. In the present case, the Superior Court and the Gerogia Supreme Court decided that these statutes confer unlimited power upon the courts to legislate the rights of the parties without any standards, guides or limitations of any kind. This is contrary to Article III Section I of the Georgia Constitution, Code Section 2-1301 vests the exclusive power to legistlate in the General Assembly (Legislature). Section IV, Par. I (Code Section 2-401) of the Georgia Constitution prohibits the legislation of private rights. the present decision of the Superior Court and of the Georgia Supreme Court legislate the rights of the parties in violation of these Constitutional Provisions, and hence deprive Appellant of his right to one third of the bank account contrary to the 14th Amendment to the U. S. Constitution, and without due process of law. In the case of the proceeds of the sale of the vacant lot, handled by personal agreement of the remaindermen, they were distributed equally to the remaindermen on August 15, 1974. Yet the Judge of the Superior Court was not at all concerned in the hearing before him on Oct. 16, 1975, that the proceeds need not go through the "estate". As a subterfuge, Appellee inserted in the record at the 1975 hearing above mentioned (Plaintiffs Ex. 2) her deed of assent as Executrix of Mrs. Mitchell is a nullity, since Mrs. Mitchell died in 1972, the superseas under Code Section 6-105 blocking her appointment as "successor executrix" of Dr. York was in effect. Dr. York owned the vacant lot; not Mrs. Mitchell.

THE SUPERIOR COURTS ERRORS

The superior court rendered an order and judgment in which it included some

findings of fact.

1. The first finding of fact is in error because of the date given for Mrs. Mitchell's death. She was executrix and life tenant until her death on Nov. 30, 1972. She did not die on Nov. 20, 1972.

2. The second finding of fact is in error in finding that two assets formerly owned by Dr. York were still under administration at the time of Mrs. Mitchell's death because Appelle testified twice that Dr. York's estate owed no debts (Ga. Code Sec. 113-801), and Georgia Code Section 113-802 provides that in the absence of her prior assent her death is conclusive evidence of her assent to her own life estate and discharges her as executrix. Since her life estate covered all of Dr. Yorks assets, the death of Mrs. Mitchell vested title to and the right of possession of the remaining property in the remaindermen named by him. Hence, the second finding of the superior court that Dr. Yorks estate existed and had assets in it is completely false. (MILLER V. HARRIS COUNTY, ET EL 186 Ga. 648: 198 S. E. 673.)

3. The third finding is false when it states that Mrs. Mitchell did not take possession or use these assets although it is difficult to understand what the Court means by possession and just why it thinks the possession it had in mind, is necessary. Dr. York owned a house on a substantial lot with this adjoining vacant lot as a sort of buffer zone between him and his next-door neighbor. Mrs. Mitchell sold the house with the front footage desired by its purchaser,

and kept the adjoining vacant lot. If any more poseession was desireable what could it be?

Dr. York is reported to have had other funds in his name in banks at death from which Mrs. Mitchell drew various amounts as executrix. Her position as Executrix enabled her to draw these checks. Why is this remaining bank account different from others?

The fourth finding of the Court is that Etta H. Mitchell did not assent to the bequest and devise contained in Item 2 of his will. In Item 2, Dr. York gave a life estate with the right ot dispose of individual assets, in all of his property to Mrs. Mitchell with remainder to the three named remaindermen. The only assent needed as set forth in Miller v. Harris County, et al, supra, is Mrs. Mitchell's assent to her own life estate. As heretofore stated, Ga. Code Section 113-802 provides that her assent must be presumed from her conduct in keeping the estate open from December 26, 1965 to her death on November 30, 1972. Furthermore, this Section provides that her discharge as executrix is conclusive evidence of her assent.

5. The fifth finding merely stating the terms of the procedural statute is meaningless in the absence of facts that under existing law warrants the appointment of an executrix. The Court has no basis for finding that the best interests of the parties will be served by the appoint.

6. The copying of the names of the heirs as found in Dr. York's will is not

objectionable, in the 6th finding.

7. As to the 7th finding, it accords with the statute providing that a majority of the heirs may nominate the personal representative.

To the last paragraph of the superior courts findings and order there are some objections. Appellant did not find it necessary to file a caveat. What he filed was merely an answer to Appellees petition. The Court has no power or capacity to appoint an administrator de bonis non under the purely procedural statutes. Its power was to affirm or deny the order appealed from. There must also be substantial facts and laws on which to base the affirming of the decision below which did not appear.

The federal questions presented are substantial.

Georgia is the largest state east of the Mississippi River. It has 159 counties. In each county sits an Ordinary (now probate judge) who the statutes equate with a justice of the peace. When children leave home to make their own way and have families of their own, the father very frequently make a will giving his wife a life estate in all of his property with the right to dispose of individual assets, and leaving the remaining assets at her death to his children. If the present decision of the Georgia Supreme Court permitting these Ordinaries to legislate the rights of the heirs, is permitted to stand, then the right of the father to make a will as he desires will be defeated frequently. Every such will has become the potential target of theft, bribery and all other predatory activities. It is shocking to observe these activities. At the request of the Attorney General and governor of Georgia I served as Assistant

Attorney General for about five years. I observed many cases of fraud and criminality without such a decision of the Georgia Supreme Court. As word of this decision spreads they are intensifying. Among 159 members of the lowest echelon of our judiciary vested with unlimited legislative power, I do not have to tell you what the result will be. The worst case I can remember happened in the case of the sister of my own secretary and her husband. The sister and husband died in a single auto accident. The sister had recently purchase a new electric typewriter. The husband of another sister who was the pastor of a sizable church broke into the house and stole this typewriter while the dead persons were in the funeral home. Word of the unlimited power granted by the Georgia Supreme Court to legislate individual rights in these cases under these statutes travels fast. I need not warn you further of the result.

What has already happened in this case.

According to her own statement, Mrs. Mitchell was born on February 15, 1879. Appended to the transcript of the hearing before the Ordinary on April 3, 1974 and the exhibits thereto Appellee and Mrs. Grady stole Mrs. Mitchell's home on April 9, 1966 by deed recorded in Deed Book 2091,Page 821. After Appellant discovered it they gave her home back to her. Only nine days later, Mrs. Mitchell tried to write a will in the same office, but instead of providing that she gave her property equally to Mrs. Grady, Appellant and Appellee, they slipped into Item II of the will without Mrs. Mitchell's consent that the property was to be divided among them, used or sold or otherwise disposed of as a majority of those named herein may determine. This provision destroyed the document as a will because Georgia Code Section 113-101 provides

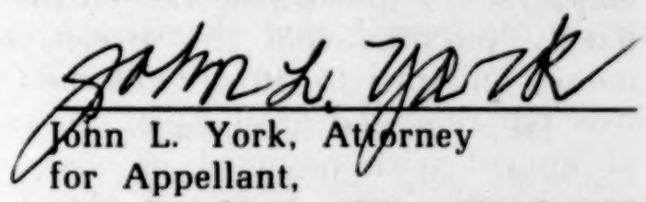
that only the testator can decide and state in his will how his property is divided between his beneficiaries. Appellant had to determine such matters by litigaiton. See Pages 79 through 81 of the transcript in the Superior Court of October 16, 1975.

On Page 9 and following pages of this statement, Appellant has set forth how Appellee secretly, fraudulently, and in violation of the existing supersedeas and in violation of the Banks commitment to hold the bank account in the bank until this case is decided, colluded with the Ordinary, and secretly took all of the money from the bank account. From Exhibits J and K to the motion for rehearing you will note how strenuously counsel labored to persuade its employee to give them the entire account. It is hardly possible that the attorneys received the money on April 15, 1974 while the Oridnarys order was not rendered until April 10, 1974, and notice of appeal with payment of costs resulting in a supersedeas was given on April 16, 1974. Of course, Appellee has never been the personal representative of the non-existent estate of Dr. York. It is most likely that it was received after the distribution of the proceeds of the sale of the vacant lot on August 15, 1974. The last item in exhibit J reports that the estate of Etta H. Mitchell was given $12,572.12. Appellee testified that Dr. York's "estate" owed no debts. Hence, this sum must be diverted to the personal use of Appellee.

Conclusion

It is the belief of Appellant as well as other qualified Georgia lawyers that the statutes quoted on pages 11 and 12 of this statement are procedural and do not grant authority to the courts to appoint personal representatives without

meeting any standards, guides or limitations, and without facts or law to support such appointment. However, the highest court in our state has decided otherwise. One hundred fifty-nine probate judges will be free to act without restraint. From my experience before the bar, as Assistant Attorney General of Georgia and on the bench, I have no difficulty in visualizing the disaster that will occur if the quoted statutes are not declared unconstitutional. It has been aptly said that, "power tends to corrupt; absolute power corrupts absolutely." If these statutes are not procedural but grant power it has no limit. Unless they are declared unconstitutional, any judge may deprive a citizen of his property without the slightest pretense of due process of law.



John L. York, Attorney
for Appellant,
1926-B Johnson Ferry Road, NE
Atlanta, Georgia 30319

Attorneys for Appellee:
T. Michael Hurley, Jr.
Fred W. Ajax, jr.
Smith, Cohen, Ringel, Kohler
& Lowe, Attorneys

2400 First National Bank Tower
Atlanta, Georgia 30303

In the Supreme Court of Georgia Decided:

30808. YORK v. DAVIS (629) Exhibit A

GUNTER, Justice.

This appeal is from a judgment, rendered after a trial before the court without a jury, that appointed the appellee, Mrs. Davis, administratrix de bonis non with the will annexed of the estate of Jessee Hardman York, deceased. We have determined that the judgment was final and appealable, because the appointment of Mrs. Davis necessarily determined that there were assets in the estate of the deceased that had to be administered. We have also concluded that this court has appellate jurisdiction.

The testator died in 1965; Mrs. Mitchell, his aunt, was named executrix of his estate; the will gave Mrs. Mitchell a life estate in the testator's property; it gave Mrs. Mitchell the power to appoint by her will the remainder "among and between my said sisters and my said brother . . . in such manner and in such proportion (without requirement of equalization) as Mrs. Etta H. Mitchell shall see fit"; the appellant, the appellee, and Mrs. Brady are the two sisters and brother referred to in the will; Mrs. Mitchell died in 1972, but the power of appointment granted to her by the testator was not validly exercised by Mrs. Mitchell; Mrs. Davis applied for appointment as successor personal representative of the testator's estate pursuant to Code Ann. Secs. 113-1210.1 and 13-1210.2; she was so appointed by the judge of the probate court over the opposition of appellant; the appellant appealed the decision of the probate

judge to the superior court; and the superior court rendered the judgment referred to above that is for review here.

The trial judge concluded, and the evidence supports his determination, that two assets remained in the testator's estate, a tract of land and a bank account, still to be administered. Administration de bonis non is granted upon an estate already partially administered, and from any cause unrepresented. Code Ann. Sec. 113-1209.

We find no error.

Judgment affirmed. All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE, ATLANTA

8/25/76

I hereby certify that the foregoing pages hereto attached contain a true and complete copy of the opinion of the Supreme Court of Georgia in the case therein stated, as appears from the original of file in this office.

Witness my signature and the seal of the said Court hereto affixed the day and year above written.

Joline B. Williams Clerk

30808

SUPREME COURT OF GEORGIA

Atlanta, July 9, 1976

The Honorable Supreme Court met pursuant to adjournment.

The following judgment was rendered:

John L. York v. Ethel York Davis

This case came before this court upon an appeal from the Superior Court of Fulton County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA

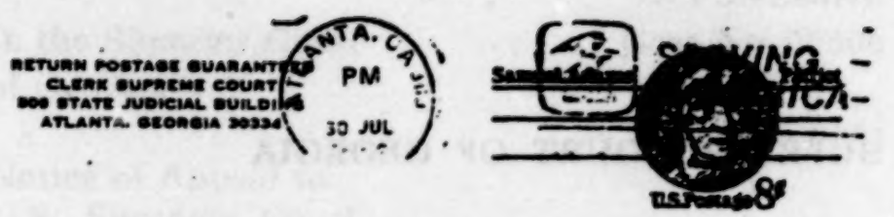
Clerk's Office, Atlanta 8/25/76

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Joline B. Williams Clerk

APPENDIX B



Mr. John L. York
ATTORNEY AT LAW
1926-B Johnson Ferry Rd., N.E.
Atlanta, GEORGIA
30319

Clerk's Office, Supreme Court of Georgia

DEAR SIR: ATLANTA 7-31-76

The motion for a rehearing was denied today:

Case No. 30808. York v. Davis

Ex. B.

Yours very truly,
MRS. JOLINE B. WILLIAMS, Clerk

30808

SUPREME COURT OF GEORGIA

Atlanta, July 31, 1976

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

John L. York v. Ethel York Davis

Upon consideration of the motion for rehearing filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA,

Clerk's Office, Atlanta, 8/25/76

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Joline B. Williams Clerk.

APPENDIX C

In the Supreme Court of Georgia

Notice of Appeal to U.S. Supreme Court.

Case No. 30808

John L. York
Appellant
V.
Ethel York Davis
Appellee

Notice is hereby given that John L. York, the Appellant above named, hereby appeals to the Supreme Court of the United States from the decision and order of the Supreme Court of Georgia in the above-styled case made and entered on July 9, 1976, "affirming" the order and judgment of Joel Fryer, Judge of the Superior Court of the Atlanta Judicial Circuit made and entered on October 20, 1975; and likewise appeals from the order of the Supreme Court of Georgia stating thereon that it was made and entered on July 31, 1976, and denying Appellants motion for rehearing of the Courts order and decision made and entered on July 9th, 1976. This notice is in addition to the notice of appeal filed by Appellant with the Supreme Court of Georgia on August 5, 1976, pursuant to its rules. Based on 28 USCA 1257.

This September 7, 1976

John L. York

John L. York,
Attorney for Appellant
1926-B Johnson Ferry Road, NE
Atlanta, Georgia, 30319

FILED IN OFFICE

Eva F. Townsend

Deputy Clerk of
Supreme Court of Ga.

In the Supreme Court of Georgia

John L. York,
Appellant
V.
Ethel York Davis,
Appellee

Case No. 30808

CERTIFICATE OF SERVICE OF THE FOREGOING NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNTED STATES UPON COUNSEL FOR APPELLEE

I, John L. York, attorney giving the above-identified notice of appeal do hereby certify that I have this day served the foregoing notice of appeal upon Appellee by enclosing a copy thereof in an envelope addressed to her counsel of record at their post office address, with first class prepaid postage, and depositing said envelope in a United States post office.

This September 8, 1976.

John L. York
Attorney for Appellant
1926-B Johnson Ferry Rd., NE
Atlanta, Georgia 30319

Attorneys for Appellee
T. Michael Hurley, Jr.
Fred W. Ajax, Jr.
Smith, Kohen, Ringel, Kohler
and Lowe, Attorneys,
2400 First National Bank Tower
Atlanta, Georgia 30303

In the Supreme Court of Georgia

John L. York,
Appellant
V.
Ethel York Davis,
Appellee

Case No. 30808

CERTIFICATE OF SERVICE OF THE FOREGOING NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES UPON MABEL YORK GRADY AT MIAMI, FLORIDA

I, John L. York, attorney giving the above-identified notice of appeal do hereby certify that I have this day served the foregoing notice of appeal upon Mabel York Grady, a party interested in this matter, by enclosing a copy thereof in an envelope addressed to her at her post office address, with first class, air mail postage prepaid, and depositing said envelope in a United States post office.

This September 8, 1976.

John L. York
Attorney for Appellant
1926 Johnson Ferry Road, NE
Atlanta, Ga. 30319

Interested Party:
Mabel York Grady
8380 S. 89th St.
Miami, Fla. 33156
Air Mail

APPENDIX D

IN THE SUPREME COURT OF THE UNITED STATES

No. _____

John L. York, Appellant

V.

Ethel York Davis, Appellee

On Appeal From The Supreme Court of Georgia

No. 30808

CERTIFICATE OF SERVICE OF JURISDICTIONAL STATEMENT

I, John L. York, attorney in support of this appeal, do hereby certify that I have this day served the within and foregoing Jurisdictional Statement upon Appellee by enclosing a copy thereof in an envelope addressed to her counsel of record at their post office address, with first class prepaid postage, and depositing said envelope in a United States post office. I further certify that I have this day personally served Mabel York Grady by enclosing a copy thereof in an envelope with first class, air mail and prepaid postage, and depositing said envelope in a United States post office.

This 4th day of October, 1976.

John L. York

John L. York, attorney
for Appellant,
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APPENDIX E

IN THE SUPREME COURT OF THE UNITED STATES

No. _____

John L. York, Appellant

V.

Ethel York Davis, Appellee

On appeal from the Supreme Court of Georgia

No. 30808

ENTRY OF APPEARANCE

John L. York, does hereby enter his appearance in the above case as counsel for the Appellant.

This 19th day of September, 1976.

John L. York

John L. York, Attorney
1926-B Johnson Ferry Rd. NE
Atlanta, Georgia 30319